

REMARKS

Claims 1-41 are pending in the present application, and were each rejected.

All rejections are traversed. Reconsideration of the claims is respectfully requested.

I. CLAIM REJECTIONS -- 35 U.S.C. § 102

Claims 1-3, 5-7, 16-18, 20-22 and 31-35 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Publication No.2002/0146983 to *Scherzer et al.*, hereinafter ("Scherzer").

This rejection is respectfully traversed.

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131, p. 2100-76 (8th ed., rev. 4, October 2005) (*citing In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990)). Anticipation is only shown where each and every limitation of the claimed invention is found in a single prior art reference. *Id.* (*citing Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987)).

Independent claim 1 requires that the downlink traffic beam has "a beam width set as a function of said pilot strength signal and said power control signal". Independent claims 16 and 31 include similar language. This feature is not taught or suggested by Scherzer.

Scherzer does teach, at paragraph 138,

For example, mobile units operating according to IS-95 and GSM protocols allow for mobile unit feedback, such as the mobile unit providing a pilot measurement message, for power level control. The present invention may operate with this feedback information in

determining beam characteristics in cooperation with the protocol's operation or separate therefrom.

As can be seen, while this passage does mention beam characteristics, it does not teach or suggest that the beam width can or should be set as a function of pilot strength signal and a power control signal, each of which is received from a mobile station, as claimed. The “power level control” referenced by Scherzer clearly is not a power control signal received from the mobile station.

Neither does Scherzer teach or suggest this limitation at any other point.

As all independent claims include a limitation not taught or suggested by Scherzer, all claims are allowable over Scherzer, and all anticipation rejections are traversed.

Accordingly, the Applicant respectfully requests the Examiner to withdraw the § 102 rejection with respect to these claims.

CLAIM REJECTIONS -- 35 U.S.C. § 103

Claims 4 and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Scherzer in view of U.S. Patent No. 6,453,177 to *Wong, et al.*, hereinafter “Wong.” Claims 8 and 23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Scherzer in view of U.S. Patent No. 6,148,208 to *Love*, hereinafter “Love.” Claims 9, 10, 24, 25 and 36 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Scherzer in view of U.S. Patent No. 5,640,414 to *Blakeney II, et al.*, hereinafter “Blakeney.” Claims 11-15, 26-30 and 37-41 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Scherzer in view of Blakeney as applied to claim 9, and

further in view of U.S. Patent Publication No. 2004/0023659 to *Xiao, et al*, hereinafter “Xiao.” The Applicant respectfully traverses these rejections.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142, p. 2100-133 (8th ed. rev. 4, October 2005). Absent such a *prima facie* case, the applicant is under no obligation to produce evidence of nonobviousness. *Id.* To establish a *prima facie* case of obviousness, three basic criteria must be met: *Id.* First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *Id.* Second, there must be a reasonable expectation of success. *Id.* Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *Id.* The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant’s disclosure. *Id.*

Applicant has reviewed these secondary references, and none of them are seen to teach or suggest the limitation of the independent claims discussed above. That is, neither Sherzer, Wong, Love, Blakeney, or Xiao, nor any combination of these references, teaches or suggests a beam width that is set as a function of pilot strength signal and a power control signal, each of which is received from a mobile station, as claimed in each independent claim.

Further, there appears to be significant problems with the Examiner’s stated “motivations” to make the specific combinations and modification proposed.

As none of the cited art, alone or in combination, teaches or suggests the limitations of each independent claim, all claims distinguish over all art of record, and all rejections are traversed.

Accordingly, the Applicant respectfully requests the Examiner to withdraw the § 103 rejection with respect to these claims.

All rejections are traversed. Reconsideration and allowance are respectfully requested.

CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

SUMMARY

For the reasons given above, the Applicant respectfully requests reconsideration and allowance of the pending claims and that this application be passed to issue. If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *jmockler@munckbutrus.com*.

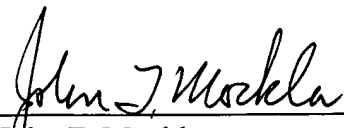
The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

MUNCK BUTRUS, P.C.

Date: 27 Sept 2006

P.O. Drawer 800889
Dallas, Texas 75380
Phone: (972) 628-3600
Fax: (972) 628-3616
E-mail: *jmockler@munckbutrus.com*



John T. Mockler
Registration No. 39,775